**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**MONDAY, THE 14TH AUGUST 2006 / 23RD SRAVANA 1928**

**ST.Rev..No. 304 of 2003**
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**TA.249/2000 of S.T.A.T.ADDL.BENCH,ERNAKULAM**
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**PETITIONER/APPELLANT:**
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**K.A. PETER, PROPRIETOR,**
**S.V.W. METAL INDUSTRIES & ENGINEERING WORKS,**
**ERAMALLOOR, ALAPPUZHA DISTRICT.**

**BY ADV. SRI.V.P.SUKUMAR**
**SRI.KURYAN THOMAS**

**RESPONDENT/ RESPONDENT:**
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**STATE OF KERALA REPRESENTED BY**
**THE CHIEF SECRETARY, SECRETARIAT,**
**THIRUVANANTHAPURAM.**

**BY GOVERNMENT PLEADER (SHRI V.V. ASOKAN)**

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C.N. RAMACHANDRAN NAIR &**
**K. M. JOSEPH, JJ.**

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**S.T.REV. NO.304 OF 2003**

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**Dated this the 14th August, 2006**

**JUDGMENT**

**C. N. Ramachandran Nair, J.**

The order under challenge is issued by the Sales Tax Appellate Tribunal confirming levy of penalty under Section 29A(4) of the KGST Act, for attempted evasion of tax in respect of a consignment of goods purchased by petitioner from outside State and brought to Kerala without being accompanied by proper documents. We have heard learned counsel appearing for petitioner and the learned Special Government Pleader appearing for the respondent, and have gone through the orders of the tribunal and the other authorities below.

2. The contention of petitioner is that goods were accompanied by Form 27B prescribed under the KGST Rules and so much so, there is no attempted evasion of tax. Petitioner stated that since the goods were transported through public

carriers, petitioner cannot be held responsible for failure of the driver of the vehicle to get checkpost seal endorsed on transport documents, namely Form 27B. Learned Government Pleader contended that Form 27B is only a supporting document and main document required for transport is either sale bill or delivery note or Certificate as required under Section 29(2)(a) of the KGST Act. The goods were seized from the custody of the public carrier and it was found that the only document accompanied the goods was Form 27B which did not have checkpost seal. The transaction is inter-state purchase of stainless steel articles from a supplier in Bombay. Obviously, the truck crossed the border checkpost wherefrom the driver failed to get the checkpost seal. There is no explanation from the public carrier as to why the goods were brought without getting checkpost seal in the document. Counsel relying on the decision of this Court in Sunitha Diesel Sales & Services v. State of Kerala ((1996) 4 KTR 348), contended that there can be no evasion of tax in respect of goods brought from outside

Kerala. However, we find that in that case, goods were transported under cover of delivery note. The further contention is that out of six consighments purchased from the same supplier, five consignments were not verified and only one consignment was subjected to detention, collection of security and levy of penalty.

3. The short question to be considered is whether there is attempted evasion of tax in respect of goods purchased from outside Kerala and brought to Kerala without being accompanied by sale bill, delivery note or any other document prescribed under Section 29(2)(a) of the Act. In the first place, we find that Form 27B is only an additional document required for inter-state transport of goods and is not "any other documents" referred to in Section 29(2)(a) of the Act. Secondly, since the bills accompanied the goods did not contain checkpost seal, it is obvious that the goods reached Kerala without it getting accounted at any time until seizure by the Department. We are of the view that attempt of tax evasion can arise even in

respect of goods purchased from outside Kerala and brought to Kerala, if goods are not accompanied by proper documents or are not accounted at checkpost, particularly when it passes through border checkposts where the goods have to be entered in the Register maintained in the sales tax checkpost. The test to be applied is whether there is likelihood of unaccounted sale of goods reaching Kerala. The possibility can be ruled out only when goods reach the State through checkposts after accounting the goods at checkposts, which will be evidenced by checkpost seal on transport documents. In other words, when goods reach through the checkpost without checkpost seal on the transport document i.e. without accounting it, there is likelihood of evasion of tax in as much as if the dealer sells the goods without accounting it, evasion of tax will be the consequence. The contention raised by the counsel that it is carriers' omission to get checkpost seal on transport documents, is no defence as carriers are only agents for the dealer, and not of the Department. In other words, it is the public carriers'

responsibility to account the goods on arrival at checkpost, to get the sales tax seal on it and deliver goods with such document. Therefore, we are unable to accept the argument of the petitioner that omission to get checkpost seal on transport documents, is not attributable to the petitioner. Since we have already found that goods are not accompanied by proper documents and Form 27B is not departmentally issued though prescribed by the Statute, is not the primary document required for transport under Section 29(2)(a) of the Act, the attempt of evasion of tax is inescapable and we, therefore, confirm the finding of the tribunal in this regard. Of course, even if the basic document was not there, the dealer could have defended the transaction, if at all, goods could have been accounted at checkpost by producing Form 27B and getting it sealed there. In the circumstances and in the absence of even a checkpost seal on Form 27B, we confirm the order of the tribunal. However, we feel that this is not a case where maximum penalty is called for because the public carrier brought petitioner's goods through

checkpost and still it escaped the attention of the Department. Moreover, by booking goods through public carriers which normally passes through sales tax checkposts, no intention can be attributable to the petitioner for attempted evasion of tax on goods purchased from outside the State for unaccounted sale in the State. In the circumstances, we reduce the penalty to equal amount of tax and modify the tribunal's order to that extent.

The ST. Rev. is disposed of as above.

**C.N. RAMACHANDRAN NAIR, JUDGE**

**K. M. JOSEPH, JUDGE**

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